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**FAIR COMPETITION  
ALLIANCE - FAX**

## COMMITTEE FOR PURCHASE

**To:** G. JOHN HEYER, GENERAL COUNSEL **From:** Jerry Egger  
JWOD COMMITTEE  
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**CC:**

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**Pages:** 6 (INCLUDING COVER)

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**Date:** FEBRUARY 9, 2005

**Re:** COMMENTS ON GOVERNANCE STANDARDS FOR CENTRAL NON-PROFITS AND  
PARTICIPATING NON-PROFIT AGENCIES....

☒ **Urgent**    ☒ **For Review**    ☐ **Please Comment**    ☐ **Please Reply**    ☐ **Please Recycle**

Mr. Heyer,

Please note the attached comments for the Committee's review.

Thank you for your cooperation and the Committee's consideration in advance.

Sincerely,

 Jerry Egger

President

Fair Competition Alliance



INDEPENDENT CONTRACTORS RESEARCH INSTITUTE

244 W. 12th Ave. Ste. 102, Eugene, OR 97401 (541) 345-5001

9 February 2005

Committee for the Purchase from People Who are Blind or Severely Disabled  
1421 Jefferson Davis Highway  
Jefferson Davis Plaza, Suite 10800  
Arlington, VA 22202-3259

**Re: Comments on proposed Governance Standards for Central Nonprofit Agencies...**

Dear JWOD Committee:

The Fair Competition Alliance (FCA) is made up of Oregon business owners, managers, and union worker members who are dedicated to ensuring fairness and equity in Oregon public contracting while safeguarding meaningful employment opportunities for individuals with severe disabilities.

Many non-profit agencies operating under Oregon's Products of Disabled Individuals Law (PDIL) also operate under the JWOD Act. Although our research clearly indicates distinct differences between the state and federal programs, the spirit and intent of these laws are similar. The FCA has extensively researched Oregon's program as well as state use programs throughout the United States. Since references regarding the connection between the state and federal programs abound in certain state administrative rules and policy, we believe that it is important for any affected party to understand the JWOD Program.

Before I comment on the proposed Governance Standards, I would like to make several observations that are relevant to the JWOD program. I hope that the Committee will consider these comments in its evaluation of this and every other comment it receives.

First, the JWOD Act is a voluntary program. The non-profit corporations that participate do so on a voluntary basis. If a participating non-profit chose to drop out of the JWOD Program, that non-profit could still do business with federal agencies. Granted, they would then need to compete with everyone else wishing to do business with the federal government. I am not aware that there is anything other than losing the benefits derived from participating in the JWOD Program that prevents these non-profit firms from competing for government contracts against all other parties.

Second, there is a fundamental conflict of interest any time a single organization is given both program promotion and program oversight. Anytime this happens someone loses or someone's rights are compromised. This is because sooner or later a choice has to be made regarding which is more important, program promotion or program oversight.

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Unfortunately, that is the situation with the JWOD Program, NISH has the responsibility to do both. From where we stand NISH seems to be doing an exceptional job of promoting the program, expanding their market share, and generating sales. However, this has been at the cost of NISH providing poor to nonexistent oversight. Moreover, it is also clear that this level of governance has already destroyed many livelihoods in Oregon and displaced one group of workers for the benefit of another.

Last and most important, the fundamental purpose behind the Javit's-Wagner-O'Day Act is the employment of blind and other severely disabled people and only this group of people.

### Rule Comments

The proposed rules are a reasonable starting point toward ensuring that any non-profit choosing to participate in the JWOD program is using good sound governance principles. These governance principles will not only improve the Committee's oversight of the JWOD program, but will also assist the non-profit's Board of Directors in carrying out their fiduciary and oversight duties. In addition, these standards allow, perhaps for the first time, a new level of transparency which will hopefully permit all citizens, especially those intended to be served as well as those firms and individuals adversely affected by these public policies, to see how their tax and charitable dollars are being spent.

Basically, the standards contained in §51-210(a) are those of good management. These are standards that one would hope are already being followed by non-profit corporations involved in the JWOD program. All non-profits will benefit from implementing these governance standards in their operations.

Non-profit corporations are established to do good works, not to benefit an individual or individuals. The standards in §51-2.10 (a) (1) and (2) establish a reasonable degree of separation between those charged with the day-to-day operations of the non-profit corporation and the board of directors charged with oversight. It is conceivable that the current organizational structure of some non-profits currently participating in the JWOD program may not conform to the standards established in the proposed rule. The long term organizational benefits to both the JWOD program and the non-profit itself clearly outweigh any short-term inconvenience caused by the need to recruit new board members or adhere to these standards.

The financial operations of even the smallest non-profits have become more and more complex. The requirement contained in §51-210(a)(3) that the non-profit's Board of Directors have an Audit Committee and that its regular audits be conducted by an independent auditing firm are completely reasonable. The proposed standards are a prudent way for a Board to exercise its fiduciary duty to the non-profit corporation it oversees. Some non-profit organizations may try to argue that the employment of an outside auditor represents an unnecessary expenditure of time and money that could be

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better spent on their primary function. Others may claim that it would create a financial hardship or is an insult to the integrity of their CEO. A Board of Directors has a duty to ensure that the corporation is being operated in a fiscally sound manner. The independent audit is an important tool in the exercise of that responsibility and as such is not an unreasonable expenditure.

Requiring that at least one member of the Board has expertise in financial matters §51-210(a)(8) will insure that the board will have a member who can interpret the audit and other complex financial matters for the Board. While this might make recruiting new board members more difficult, the positive benefit greatly outweighs any extra recruiting effort.

Overseeing and evaluating the manner that a Director or CEO executes his duties on behalf of the corporation is the second most important duty, after fiscal oversight, of a corporation's Board. All that §51-210(a)(4) does is insure that the board understands and executes that responsibility. Regarding the establishment and review of the CEO's compensation package, who else should do it? The CEO and his subordinates all have a clear conflict of interest in the matter.

Conflict of interest or the perception of a conflict damages the credibility of both the non-profit organization and the JWOD program. The whole idea behind being a non-profit is that it is operated to the benefit of some public not-for-profit purpose. Having and using a strong conflict of interest policy is important in maintaining the public's trust and support. It also helps prevent corruption from entering the day-to-day operations of the non-profit corporation, again to its benefit. The existence of the policy required in §51-210(a)(5) also benefits the Committee in its oversight responsibilities by causing the disclosure of any possible conflicts before they can adversely affect the function or credibility of the JWOD program.

A regular turnover in the membership of the Board of Directors is of great benefit to any organization. It avoids stagnation and provides for an injection of fresh ideas and new points of view to Board deliberations. The requirement in §51-210(a)(6) insures that those organizations participating in the JWOD program will receive that benefit.

The quickest and best way to get an individual to carefully scrutinize a document is to require that he personally attest to its accuracy. Requiring that the governing Board of a non-profit corporation participating in the JWOD program review and certify the organization's IRS Form 990s §51-210(a)(7) will inspire careful review by the individuals most able to insure their accuracy and completeness. This standard also clearly shows that the Committee will be holding the Board responsible for the corporation's filings. As the Board already has the authority to insure accurate and timely reporting, this requirement only insures that participating non-profit Boards will be more likely to exercise that authority. As the Non-profit is already required to accurately complete and submit this form in a timely manner, requiring that the Board sign-off on the filing should have no impact on the operation of the non-profit.

There is great benefit from transparency in public operations. While not exactly public, non-profit corporations are organized to provide some form of public benefit. In the case of the JWOD Act it is to provide employment for the blind and other severely disabled individuals. Requiring that Board meeting minutes be available for public review as required in §51-210(a)(9) is not unreasonable since non-profits operate in the public trust. In the long run, the non-profits themselves will benefit from this requirement. The governing boards, knowledgeable in the fact that their actions will be subject to public scrutiny, will be more diligent in the execution of their duties.

Periodically, newspapers have run front-page stories on how much money the CEO's of some large regional or national charity is being paid. Locally, one story was about the over \$800,000 per year that the head of Goodwill of the Columbia Willamette is being paid. This pay rate provides a stark contrast to the 27 cents an hour that Goodwill pays its lowest paid employee. This brouhaha in the press and talk radio did nothing to advance the standing of Goodwill and other large non-profit organizations in the community. Clearly, to get competent people an organization needs to offer a competitive compensation package. But as every dollar paid to the CEO is a dollar not available to do the corporations good works, the Board of Directors needs to insure that the compensation package it offers is a reasonable one. The seven criteria in §51-210(b) are those that a reasonable and prudent Board of Directors should be using in evaluating the compensation packages that their corporation is offering. As stated earlier, the purpose of the JWOD program is to provide employment for blind and other severely disabled individuals. It is not to make the management rich.

The Committee is correct in using the compensation package of career federal government employees as the benchmark for evaluating executive compensation. Not only as the Committee's rule announcement clearly states, that the JWOD program is a federal program, but also because it clearly establishes a balance between responsibilities and compensation that is acceptable to a large pool of individuals. By doing so it counters the argument that we need to pay large amounts to get good people. The federal government is getting good people who are willing to work at that rate, making it a completely reasonable standard to use.

The ratio between the compensation package senior management and the corporate median is also a good indicator of the reasonableness of a compensation package. It also permits an apple to apples comparison with other organizations in other areas doing different functions. Clearly as is the case of the example cited above, there are non-profit organizations with compensation packages that would be hard to defend against an evaluation using the criteria in §51-210(b).

Timely oversight is important in the regulation of a program such as the JWOD Act. It does little good to discover non-compliance so long after the fact that enforcement or correction is difficult or impossible. As it is pointed out in the background material accompanying this rule, non-profits are routinely granted extensions to the already generous reporting periods, resulting in filings long after the periods covered by the Form 990. This delay clearly renders the 990 Form as an unsuitable vehicle for showing

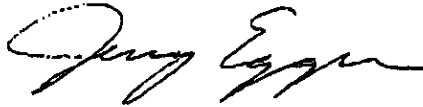
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compliance with any of the requirements of this rule. As these requirements do not mandate the collection of large amounts of data or complex calculations, establishing a due date separate from that of the Form 990 is not unreasonable or onerous.

Non-profit corporations participating in the Javis-Wagner-O'Day program receive two large benefits. First, as non-profits, they have a significant tax exemption and their supporters are allowed to deduct their contributions from their taxes. Second, they are given the opportunity to market their goods and services to the federal government unfettered by the competitive procurement process. The benefits these Non-profit Corporations receive from participating in the JWOD greatly outweigh any inconvenience that meeting the proposed governance standards in rule might create.

This rule clearly represents a real win-win for all concerned. I most strongly urge you to adopt them as drafted. Thank you for your time and most careful consideration of this matter.

Sincerely



Jerry Egger  
President  
Fair Competition Alliance